

Supreme Court, U.S.  
FILED

No. \_\_\_\_\_

05-501 OCT 10 2005

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In The

Supreme Court of the United States

LEVI BREEDLOVE,

*Petitioner,*

v.

MC CALLA, RAYMER, PADRICK, COBB,  
NICHOLS & CLARK, LLC, *et al.*,

*Respondents.*

On Petition For Writ Of *Certiorari*  
To The United States Court Of Appeals  
For The Eleventh Circuit

**PETITION FOR WRIT OF CERTIORARI**

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October 10, 2005

## QUESTIONS PRESENTED

In a Title VII case at the end of discovery, Petitioner notified Respondent's Counsel that he would rely on "the Swanson letter" (just discovered in a file in another case) in response to motion for summary judgment. Eight days later Counsel asserted that the letter was "**forged**," promised to conduct an investigation and to report the results to Petitioner - on which he relied. After further requests for results, extensions of time to respond, more promises that investigation was underway, and with deadlines at hand, Petitioner moved to amend plaintiff's complaint and responded to the motion citing the letter with **advice to the court** that Counsel claimed the letter was forged. Within days after the last filing, Counsel moved under **Rule 56(g)** to strike the letter and a statement that relied on plaintiff's affidavit (that in turn relied in part on the letter).

**(1)** Against the backdrop of an earlier "Magistrate Judge's Show Cause Order" (132a) addressed to "the parties," Is an "**Order**" (130a) - not addressed to anyone - calling for a "hearing pursuant to [Respondents'] request for hearing on Rule 56(g) and for potential violations of Rule 11(b) regarding Plaintiff's submission of affidavit and document 12 in ... response to motion for summary judgment" - compliant with **Rule 11(c)(1)(B)**, F.R.Civ.P., and Fifth Amendment Due Process?

**(2)** Where plaintiff was not present and nobody was sworn at the oral-argument hearing, at which the magistrate raised for the first time the issue of "**fraud on the court**", and where Petitioner was surprised by revelation of harmful *ex parte* deposition of plaintiff's daughter, was Petitioner entitled to an **evidentiary hearing on his good faith** under the Fifth Amendment prior to being ruinously and vindictively sanctioned?

**(3)** Where the district court awarded to Respondent **counsel fees** in striking the Swanson letter and replying to a post-hearing motion to stay the magistrate's report that was **mooted** the next day by issuance of the report, was the award of fees in compliance with Rule 11(c)(2)?

**(4)** Where the district judge ruled that "the Court should impose the maximum monetary sanction that Starks and Breedlove can realistically pay." (15a), did the court abuse its discretion under Rule 11(c)(1)(B) in not considering the issue whether Respondent law firm had **mitigated its damages**?

**(5)** At an evidentiary hearing on Rule 11 *sua sponte* sanctions,

(a) Which party should bear the **burden of proof** and what quantum of proof should be required?

(b) Is the **impact of non-monetary sanctions** on the sanctioned person relevant under Rule 11(c)(2); *e.g.*, whether same would ruin Petitioner's legal career and bankrupt him?

(c) Should a *mens rea* requirement of **subjective bad faith** be required for a *sua sponte* sanction under Rule 11(c)(1)(B)?

**(6)** In determining the financial capability of a sanctioned person to pay monetary sanctions under Rule 11(c)(2), is it an abuse of discretion for the district court *sua sponte* to **deputize opposing counsel** to conduct broad and lengthy discovery into that financial capability and must the court set in advance the **accounting principles** under which that capability is to be determined?

### **OTHER PARTIES TO PETITION**

Other parties to this Petition are Pennie A. Alper and Chrissa T. Hammond, employees of McCalla, Raymer, Padrick, Cobb, Nichols & Clark, LLC, a large Atlanta law firm (all are referred together as "Respondents" or "Respondent law firm").

**TABLE OF CONTENTS**

Questions Presented	i
Other Parties To Petition	iii
Opinions Below And Jurisdiction	1
Constitutional Provisions And Rules Involved	2
Statement Of The Case	2
Statement Of Facts	2
Course Of Proceedings	2
Post-Discovery Proceedings	3
Summary Judgment Proceedings	4
December Order -- Not "Show Cause" Order	5
Magistrate's January Hearing (Oral Argument)	7
(1)    Hearing Was Not Evidentiary	7
(2)    Petitioner Distracted by Perrin Bombshell	7
(3)    Magistrate's Focus on "Fraud on Court"	7
(4)    Magistrate's Recognition of Petitioner's Confusion about Possibility of Rule 11 Sanctions	7

(5)	Petitioner's Disclosure of Initial Investigation into Swanson Letter	8
(6)	Magistrate's Recognition that Petitioner Was Reasonable to Rely on Perrin's Promises	9
(7)	Respondent's 'Recognition that Petitioner Acted in Good Faith	9
(8)	Respondent's Acknowledgment of Omission Of Swanson Affidavit (Magistrate's Implied Recognition that Petitioner Acted Reasonably)	9
Petitioner's Post-Argument Investigation Into Swanson Letter		10
Magistrate's Next Day's Report		11
District Court's Order of March 2003		12
First Appeals to Eleventh Circuit		12
Upon Remand, District Court Issued Imprecise Directions for Financial Information		14
Deputization of Respondent to Inquire Into Petitioner's Financial Assets		15
Inquiry into Petitioner's Financial Assets		15
District Court's Order of September 2004		15

Thwarted Deposition of Starks's Daughter Confirms Attempted Bribe Which District Court Ignores	17
Second Appeal to Eleventh Circuit	17
<b>REASONS <i>CERTIORARI</i> SHOULD BE GRANTED</b>	
(1) NO SUPREME COURT RULING ON 1993 AMENDMENT TO RULE 11	18
(2) RULE 11(c)(1)(B) REQUIRES "SHOW CAUSE" ORDER "DESCRIPTING THE SPECIFIC CONDUCT THAT APPEARS TO VIOLATE [RULE 11](b)"	18
(3) FIFTH AMENDMENT REQUIRES ADEQUATE NOTICE THAT LIBERTY AND PROPERTY ARE AT STAKE IN RULE 11 LITIGATION	20
(4) FIFTH AMENDMENT REQUIRES AN EVIDENTIARY HEARING PRIOR TO IMPOSI- TION OF RULE 11(c)(2) SANCTIONS WHERE THE PROCEEDINGS ARE "AKIN TO CRIMINAL CONTEMPT" AND WHERE PRO- POSED SANCTIONS ARE RUINOUS AND THE JUDGE IS PERSONALLY OUTRAGED	21
(5) RULE 11(c)(2)(B) REQUIRES AN ORDER DIRECTING PAYMENT OF MONEY INTO COURT ITSELF, AND NOT TO A PARTY	22
(6) RULE 11(c) REQUIRES A FINDING OF FACT THAT THE ATTORNEY ACTED IN "SUBJECTIVE BAD FAITH"	24

(7) RULE 11(c)(1)(B) REQUIRES PLACING ON BENEFICIARY OF SANCTION THE BURDEN OF PROOF BY CLEAR AND CONVINCING EVIDENCE	26
(8) RULE 11(c)(2) REQUIRES ASSESS- MENT OF THE IMPACT THAT NON- MONETARY SANCTIONS MIGHT HAVE ON ATTORNEY AND STATE-FEDERAL RELATIONS	27
(9) RULE 11 SHOULD NOT PERMIT COURT'S DEPUTIZING RESPONDENT LAW FIRM TO CONDUCT BROAD DISCOVERY	28
(10) RULE 11 REQUIRES DETERMINA- TION THAT PREVAILING PARTY MITIGATED ITS DAMAGES	28
CONCLUSION	29
APPENDIX	

## TABLE OF AUTHORITIES

### **U.S. Constitution**

Article III	2
-------------	---

Fifth Amendment	2, 20, 21
-----------------	-----------

### **Cases**

<i>Aetna Ins. Co. v. Meeker</i> , 953 F.2d 1328 (11 <sup>th</sup> Cir. 1992)	14, 22
<i>Barr Rubber Prods. Co. v. Sun Rubber Co.</i> , 425 F.2d 1114 (2 <sup>nd</sup> Cir. 1970)	27
<i>Brickwood Contractors, Inc. v. Datanet Eng., Inc.</i> , 369 F.3d 385 (4 <sup>th</sup> Cir. 2004) (en banc)	20, 25
<i>Bryne v. Nezhat</i> , 261 F.3d 1075 (11 <sup>th</sup> Cir. 2001)	21
<i>Business Guides, Inc. v. Chromatic Comm. Enter., Inc.</i> , 498 U.S. 533, 111 S.Ct. 922, 112 L.Ed.2d 1140 (1991)	18, 23, 27
<i>Christianson v. Colt Indus. Operating Corp.</i> , 486 U.S. 800, 108 S.Ct. 2166, 100 L.Ed.2d 811 (1988)	1
<i>Cooter &amp; Gell v. Hartmarx Corp.</i> , 496 U.S. 384, 110 S.Ct. 2447, 110 L.Ed.2d 359 (1990)	18
<i>Danvers v. Danvers</i> , 959 F.2d 601 (6 <sup>th</sup> Cir. 1992)	29
<i>Doering v. Union Co.</i> , 857 F.2d 191 (3 <sup>rd</sup> Cir. 1988)	29
<i>Donaldson v. Clark</i> , 819 F.2d 1551 (11 <sup>th</sup> Cir. 1987) (en banc)	21

<i>Frazier v. Heebe</i> , 482 U.S. 641, 107 S.Ct. 2607, 96 L.Ed.2d 557 (1987)	2
<i>Hicks v. Feiock</i> , 485 U.S. 624, 108 S.Ct. 1423, 99 L.Ed.2d 721 (1988)	22, 26
<i>In re Pennie &amp; Edmonds LLP</i> , 323 F.3d 86 (2 <sup>nd</sup> Cir. 2003)	5, 13, 24-26
<i>In re Robbins</i> , 575 S.E.2d 501 (Ga. 2003)	3
<i>In re Yagman</i> , 796 F.2d 1165 (9 <sup>th</sup> Cir. 1986)	29
<i>International Union, UMWA v. Bagwell</i> , 512 U.S. 821, 114 S.Ct. 2552, 129 L.Ed.2d 642 (1994)	22
<i>Johnson v. Waddell &amp; Reed, Inc.</i> , 74 F.3d 147 (7 <sup>th</sup> Cir. 1996) ( <i>per curiam</i> )	19, 20, 23
<i>Kaplan v. Daimler-Chrysler, A.G.</i> , 331 F.3d 1251 (11 <sup>th</sup> Cir. 2003)	14, 19, 25, 26
<i>Martin v. Brown</i> , 63 F.3d 1252 (3 <sup>rd</sup> Cir. 1995)	25
<i>Norsyn, Inc. v. Desai</i> , 351 F.3d 825 (8 <sup>th</sup> Cir. 2003)	23
<i>Nuwesra v. Merrill Lynch, Fenner &amp; Smith, Inc.</i> , 174 F.3d 87 (2 <sup>nd</sup> Cir. 1999)	23
<i>Obert v. Republic Western Ins. Co.</i> , 398 F.3d 138 (1 <sup>st</sup> Cir. 2005)	7, 21, 24, 28
<i>Oliveri v. Thompson</i> , 803 F.2d 1265 (2 <sup>nd</sup> Cir. 1986)	29

<i>Pavelic &amp; LeFlore v. Marvel Enter. Group,</i> 493 U.S. 120, 110 S.Ct. 456, 107 L.Ed.2d 438 (1989)	18, 24
<i>Pollution Control Indus. of Amer. v. Van Gundy,</i> 21 F.3d 152 (5 <sup>th</sup> Cir. 1994)	29
<i>Thornton v. General Motors Corp.</i> , 136 F.3d 450 (5 <sup>th</sup> Cir. 1998) (per curiam)	20, 23
<i>United Nat'l Ins. Co. v. R &amp; D'Latex Corp.</i> , 242 F.3d 1102 (9 <sup>th</sup> Cir. 2001)	19
<i>United States v. Kouri-Perez</i> , 187 F.3d 1 (1 <sup>st</sup> Cir. 1999)	22
<i>United States v. North</i> , 621 F.2d 1255 (3 <sup>rd</sup> Cir. 1980)	21
<i>United States v. Olano</i> , 507 U.S. 725, 113 S.Ct. 1770, 123 L.Ed.2d 508 (1993)	20
<i>United States v. Rapone</i> , 131 F.3d 188 (D.C. Cir. 1997)	22
<i>Vollmer v. Publishers Clearing House, Inc.</i> , 248 F.3d 698 (7 <sup>th</sup> Cir. 2001)	23
<i>Young v. City of Providence</i> , 404 F.3d 33 (1 <sup>st</sup> Cir. 2005)	25, 26
<i>Young v. United States ex rel. Vuitton et Fils, S.A.</i> , 481 U.S. 787, 107 S.Ct. 2124, 95 L.Ed.2d 740 (1987)	28
<i>Wojan v. General Motors Corp.</i> , 851 F.2d 969 (7 <sup>th</sup> Cir. 1988)	29

### **Federal Statutes**

28 U.S.C. § 1254(1)	1
---------------------	---

28 U.S.C. § 1331	2
28 U.S.C. § 1441	2
42 U.S.C. § 2000e	2
42 U.S.C. § 2000h	22
<b>Federal Rules</b>	
Federal Rules of Civil Procedure	24
Rule 11	<i>passim</i>
Rule 11(b)	6, 18, 19
Rule 11(c)(1)(A)	2
Rule 11(c)(1)(B)	<i>passim</i>
Rule 11(c)(2)	2, 23, 27
Rule 11(c)(2)(B)	22
Rule 27(b)	17, 18
Rule 56(g)	6, 12, 19
Rule 60(b)	17, 18
Local Rules 56.1(A), N.D.Ga.	5
<b>Other Authority</b>	
P.A. Joy, <i>Relationship Between Civil Rule 11 And Lawyer Discipline</i> , 37 Loyola L.A. Law R. 765 (2004)	27